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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TERI PAGARIGAN et al., Plaintiffs and Appellants, v. LIBBY CARE CENTER, INC., et al., Defendants and Respondents.	B208733 (Los Angeles County Super. Ct. No. PC027083)

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Balisok & Associates, Russell S. Balisok and Steven C. Wilheim for Plaintiffs and Apellants Teri Pagarigan, Mary Pagarigan and John Pagarigan.

Beach Whitman Cowdrey, Sean D. Cowdrey and J. Jane Fox for Respondents and Defendants Libby Care Center, Inc. and Longwood Management Corporation.

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Teri Pagarigan, Mary Pagarigan and John Pagarigan, the heirs and successors-in-interest of their deceased mother, Johnnie Pagarigan, appeal from the judgment dismissing their elder abuse action against Libby Care Center, Inc. (Libby Care) and Longwood Management Corporation (Longwood), the operators of Magnolia Gardens, the long-term, skilled nursing facility where their mother resided until shortly before her death. Following our decision in *Pagarigan v. Greater Valley Medical Group, Inc.* (Aug. 23, 2006, B172642) [nonpub. opn.] (*Pagarigan IV*), which reversed in substantial part the trial court's order sustaining without leave to amend Libby Care and Longwood's demurrer to the third amended complaint (while affirming the orders dismissing the action as to a number of other defendants) and remanded the case with instructions to permit the Pagarigans to amend their complaint in accordance with our opinion, the trial court granted Libby Care and Longwood's motion to strike the Pagarigans' claims for punitive damages and enhanced remedies under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) (Elder Abuse Act), concluding the fourth and then fifth amended complaints failed to adequately allege the abuse or neglect of Johnnie Pagarigan was authorized or ratified by an officer, director or managing agent of Libby Care or Longwood. The trial court thereafter granted Libby Care and Longwood's motion for judgment on the pleadings because, as the Pagarigans conceded, there were no other remedies available for the causes of action pleaded. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Johnnie Pagarigan suffered a stroke and was admitted to Magnolia Gardens in February 2000. She died in June 2000. The Pagarigans claim abuse and poor medical care caused their mother's death: While at the Magnolia Gardens nursing home, Johnnie Pagarigan became malnourished and dehydrated, developed severe pressure sores on her lower back and contracted a serious infection at her gastric tube insertion site, which caused her abdomen to distend and darken. The Pagarigans contend the nature and severity of their

mother's medical condition was concealed from them and further assert that transfer to an acute care facility was delayed until their mother was untreatable.

1. *The Original Complaint and the Decisions Relating to Arbitration*

In February 2001 the Pagarigans filed a survival action against Aetna U.S. Healthcare of California, Inc. and several other Aetna-affiliated entities, Greater Valley Medical Group, Inc. and several entities related to Greater Valley Medical Group (including Dr. Christopher Buttelman, a physician who allegedly had contracted to monitor Johnnie Pagarigan's medical care), Libby Care and Longwood,[1] asserting multiple causes of action based on negligent and willful misconduct and elder abuse on behalf of Johnnie Pagarigan, as well as a wrongful death claim on their own behalf. They sought general damages on all claims except their basic negligence and wrongful death causes of action, special damages, punitive damages, treble damages under Civil Code section 3345 and enhanced remedies as provided in the Elder Abuse Act. The overarching theory of the lawsuit was that agreements among the Aetna entities, the Greater Valley Medical Group entities and Libby Care and Longwood to provide long-term, custodial health care to enrollees in Aetna's health maintenance organization (HMO) were based on improper economic incentives that led to the understaffing and underfunding of Magnolia Gardens and foreseeably resulted in the denial of proper care to Johnnie Pagarigan.

In August 2001 the trial court denied Libby Care and Longwood's petition to compel arbitration. We affirmed that decision in *Pagarigan v. Libby Care Center* (2002) 99 Cal.App.4th 298 (*Pagarigan I*), holding a family member who signs a nursing home admission agreement as a responsible party for a mentally incompetent adult is not necessarily authorized to sign an arbitration agreement on behalf of the patient. In *Pagarigan v. Superior Court* (2002) 102 Cal.App.4th 1121 (*Pagarigan II*) we issued a

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[1] Libby Care and Longwood, corporations doing business in Los Angeles County, are alleged by the Pagarigans to "share various aspects of the operation of skilled nursing facilities," including Magnolia Gardens.

writ of mandate directing the trial court to vacate its order compelling arbitration of the Pagarigans' claims against the Aetna entities, holding the mandatory disclosure requirements of Health and Safety Code section 1363.1 are not preempted by the Federal Arbitration Act or federal Medicare provisions.

2. *The Demurrers and Subsequent Appellate Proceedings*

With the lawsuit now proceeding in the superior court, the different defendant groups filed a series of demurrers challenging the various theories of liability advanced by the Pagarigans; the Pagarigans, in turn, filed several amended complaints when granted leave to do so. The Aetna entities' demurrer to the second amended complaint was ultimately sustained without leave to amend. In *Pagarigan v. Aetna U.S. HealthCare of California, Inc*. (Oct. 25, 2005, B167722) [nonpub. opn.] (*Pagarigan III*) we affirmed the trial court's order as to seven of the nine causes of action at issue and reversed as to the remaining two, allowing the Pagarigans "one more opportunity to file good faith amendments." Following remand, the Pagarigans failed to timely file an amended complaint, and the action was again dismissed as to the Aetna entities. We affirmed the judgment. (*Pagarigan v. Aetna U.S. Healthcare of California, Inc.* (Dec. 19, 2007, B193114 [nonpub. opn.] (*Pagarigan V*).)

The trial court orders sustaining the demurrers of the other defendants (the Greater Valley Medical Group entities and Libby Care and Longwood) were considered in our nonpublished[2] decision in *Pagarigan IV, supra*. In our opinion we noted capitation fee agreements are standard in the health care industry and are expressly authorized by

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[2] Under a basic capitation agreement an HMO enters into an agreement with the federal Health Care Financing Administration (HCFA) pursuant to which Medicare enrollees can use their Medicare benefits to become a member of the HMO and the HMO provides health care benefits and services to the enrollee, either directly or through separate entities that provide services by agreement with the HMO, which pays a fixed periodic sum to the servicing organization. As alleged by the Pagarigans, Johnnie Pagarigan enrolled in an Aetna HMO, which had contracted with the Greater Valley Medical Group entities to provide services, including long-term nursing care through Libby Care and Longwood.

California law. (See Health & Saf. Code, § 1348.6.) Notwithstanding the alleged negative impact of the capitation system on patient care—the servicing entity, paid a fixed fee per enrollee, can effect cost savings and improve profits by deferring or denying entirely necessary medical and related care—capitation agreements, without more, cannot support tort claims such as those alleged by the Pagarigans. However, repeating the central analysis of *Pagarigan III*, *supra*, we explained an HMO might be liable for a breach of its duty of care in the manner in which it handled capitation arrangements if, for example, it negotiated a capitation rate with a given provider it knew or should have known was so low the provider would have an undue economic incentive to deny medically necessary services or deliver below-standard care or if it knew or should have known the provider it contracted with was seriously under-staffed, poorly administered or otherwise likely to deny medically necessary services or deliver below-standard levels of care. Similarly, the Greater Valley Medical Group entities, which had contracted with Libby Care and Longwood to provide long-term nursing care at Magnolia Gardens, might be liable for a breach of their duty of care if they knew or should have known various economic incentives it provided to health care decisionmakers involved with patient care at Magnolia Gardens would result in inadequate care to enrollees, including the deferral or denial of medically necessary services. The claims against the Greater Valley Medical Group entities failed, we held, because there were no such allegations. "As alleged here, only the entity providing the actual custodial care, Libby Care [and Longwood], would be in a position to know the level of care being administered its enrollees and whether its capitated fee agreement permitted it to care for its enrollees in conformity with state law."

We affirmed the trial court's orders sustaining without leave to amend the demurrers of the Greater Valley Medical Group entities. As to Libby Care and Longwood, we held the Pagarigans' third amended complaint, by alleging their mother was injured as a result of the failure of the personnel supervising Magnolia Gardens to ensure that she was turned, lifted, fed, hydrated and transferred to an acute care facility when necessary, adequately pleaded a cause of action for negligence. As to the claim for

willful misconduct, we concluded the current allegations, as well as proposed amendments submitted while the matter was on appeal, were inadequate, but might be restated to support such a claim against Libby Care and Longwood, by alleging their conduct in caring for Johnnie Pagarigan "was so substandard it constituted a reckless disregard for her health and well-being, that [Libby Care and Longwood] had actual knowledge of the peril to decedent resulting from [their] failure to adequately care for her need, and that [they] consciously failed to act to avert the peril."

Similarly, with respect to the causes of action for elder abuse, intentional infliction of emotional distress and tort per se (based on alleged violations of criminal and civil elder abuse statutes), we held the potential amendments to adequately allege willful misconduct could also salvage these claims against Libby Care and Longwood. Finally, as to the allegations of malice intended to support a claim for punitive damages, we directed the trial court, which had struck the allegations, to allow the Pagarigans to attempt to amend their pleading to assert their mother's inadequate treatment and care at Magnolia Gardens constituted despicable conduct carried on with a willful and reckless disregard of her condition sufficient to constitute malice within the meaning of Civil Code section 3294. However, quoting from *White v. Ultramar, Inc*. (1999) 21 Cal.4th 563, 572, we noted that, as amended in 1980, for corporate punitive damages liability Civil Code section 3294, subdivision (b), requires that the wrongful act giving rise to the exemplary damages be committed by an "officer, director or managing agent," and cautioned, when a punitive damage claim is alleged against corporate owners or managers such as Libby Care and Longwood, "'the drafters' goals were to avoid imposing punitive damages on employers who were merely negligent or reckless and to distinguish ordinary respondeat superior liability from corporate liability for punitive damages." That is, we explained, the Legislature intended to limit corporate punitive damage liability to situations in which the wrongful actors are "employees who exercise substantial independent authority and judgment over decisions that ultimately determine corporate policy." (*White,* at p. 573.)

3. *The Pagarigans' Fourth and Fifth Amended Complaints and the Trial Court's Rulings on the Motions To Strike Claims for Punitive Damages and Enhanced Elder Abuse Act Remedies*

On January 5, 2007, on remand from *Pagarigan IV*, the Pagarigans filed a fourth amended complaint, naming as defendants only Libby Care and Longwood and asserting the five survival causes of action we permitted to continue against these two defendants (negligence, willful misconduct, intentional infliction of emotional distress, elder abuse and tort per se), as well as a claim on their own behalf against them for wrongful death. Notwithstanding the admonition in our opinion in *Pagarigan IV* about the pleading requirements for a claim of corporate liability for punitive damages, the new complaint alleged only that Libby Care, Longwood and "Does 1-25," motivated by financial incentives, failed to supervise the care provided to Johnnie Pagarigan or to provide her with the care and treatment she needed and, in so doing, "acted with actual intent and in conscious disregard of the high probability that [Johnnie Pagarigan] would be denied needed healthcare and become ill or die." There were no allegations any officer, director or managing agent of Libby Care or Longwood, as opposed to the corporate entities themselves acting through unspecified personnel, committed any wrongful acts or authorized or ratified the alleged acts or omissions that caused Johnnie Pagarigan's injuries or death.

Libby Care and Longwood demurred to the wrongful death cause of action on the ground it had previously been dismissed as to them (to expedite a prior appeal) and moved to strike the claims for punitive damages and for remedies under the Elder Abuse Act (Johnnie Pagarigan's pre-death pain and suffering and attorney fees) based on the failure to allege the necessary involvement of an officer, director or managing agent of the two corporate defendants. The Pagarigans filed a statement of nonopposition to the demurrer,[3] but opposed the motion to strike, arguing there is no requirement the corporate

[3] The Pagarigans do not assert on appeal any error in connection with the trial court's order sustaining the demurrer to the wrongful death cause of action.

officers who ratified or authorized the offending conduct be identified in a complaint, nor any pleading requirement to identify the corporate employee whose conduct was ratified or authorized. The trial court granted the motion to strike, relying on *White v. Ultramar, Inc., supra,* 21 Cal.4th 563, finding the conclusory allegations in the fourth amended complaint insufficient, but allowed the Pagarigans "one last chance" to attempt to properly plead their claims for punitive damages and remedies under the Elder Abuse Act.

On May 14, 2007 the Pagarigans filed a fifth amended complaint, again asserting the five survival causes of action against Libby Care and Longwood. In paragraph 18 of this pleading the Pagarigans alleged the conduct they challenged—specifically, the formulation of policies and procedures governing the care of patients at Magnolia Gardens, including the management decision to under staff and under fund Magnolia Gardens, the failure to supervise and train nursing staff, the failure to notify the Pagarigans of changes in their mother's condition and the failure to transfer her to an acute care facility when her needs could no longer be met at Magnolia Gardens "were committed by, or authorized and ratified by officers, directors and/or managing agents" of Libby Care and Longwood. Paragraph 18 further alleged Rosa Valdivia was appointed by Libby Care and Longwood as the administrator for Magnolia Gardens and, as such, was responsible for the administration and management of the facility, including the formation and implementation of corporate policies at the facility. Paragraph 18 also alleged Mona Paras was appointed by Libby Care and Longwood as director of nursing services for Magnolia Gardens; as the person responsible for nursing services at the facility, she had administrative authority with respect to the formation and implementation of corporate policies and procedures relating to patient care. Finally, it was alleged Valdivia and Paras directed the care and treatment provided to Johnnie Pagarigan and were personally involved in, or authorized and ratified, all decisions relating to her care and treatment, including the misconduct alleged in the amended complaint.

Libby Care and Longwood again moved to strike the claims for punitive damages and enhanced remedies under the Elder Abuse Act, arguing the identification of two facility-level supervisors with authority only with respect to a single facility, rather than responsibility for significant aspects of Libby and Longwood's corporate business, was insufficient to support those claims. The absence of any allegation that these employees (or any other offending employee) belonged to the leadership group of corporate officers, directors or managing agents of Libby and Longwood charged with setting corporate policy, they insisted, required the claims be struck.

The trial court agreed, granting the motion to strike without leave to amend: "The allegations in the Fifth Amended Complaint do not allege a corporate-wide policy because the allegations fail to show ratification and/or authorization of the alleged policy by an officer, director or managing agent of the corporation. The amended complaint contains no facts to support the conclusory allegations that the Administrator and Director of Nursing Services were involved in the formation and implementation of corporate policies."

4. *The Motion for Judgment on the Pleadings*

Following the trial court's ruling on the motion to strike, Libby Care and Longwood moved for judgment on the pleadings, arguing the complaint failed to state facts sufficient to constitute a cause of action because there were no recoverable damages. The Pagarigans agreed and filed a "conditional non-opposition" to the motion (reserving their right to seek appellate review of the order striking the claims for punitive damages and Elder Abuse Act remedies). The court granted the motion on April 14, 2008. Judgment was entered in favor of Libby Care and Longwood the same day.

CONTENTION

The Pagarigans contend they adequately pleaded the conduct constituting abuse of their mother was authorized or ratified by an officer, director or managing agent of Libby Care and Longwood.

DISCUSSION

1. *Standard of Review*

Libby Care and Longwood's motion to strike functioned like a demurrer, challenging the legal sufficiency of the fifth amended complaint's allegations of punitive damages and enhanced remedies under the Elder Abuse Act. Accordingly, as we would with an order striking punitive damages in other contexts, we review the trial court's order in this case de novo. (See *Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145, 1157 ["standard of review for an order on a motion to strike punitive damages allegations is de novo"]; *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253 [order striking punitive damages allegations is reviewed de novo]; see also *Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 53 ["motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true"].)

2. *The Standard for Recovery of Punitive Damages and Elder Abuse Act Remedies from a Corporate Defendant*

a. *Punitive damages*

Civil Code section 3294, subdivision (a), permits the recovery of punitive damages in an action for the breach of a noncontractual obligation when clear and convincing evidence establishes the defendant "has been guilty of oppression, fraud, or malice." Pursuant to Civil Code section 3294, subdivision (b), however, punitive damages may not be awarded against an employer based upon the acts of an employee unless the employer (i) had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others, (ii) authorized or ratified the wrongful conduct for which the damages are awarded or (iii) was personally guilty of oppression, fraud or malice. "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or

act of oppression, fraud or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).)[4]

As we explained in *Pagarigan IV*, in *White v. Ultramar, Inc., supra*, 21 Cal.4th 563, the Supreme Court held Civil Code section 3294, subdivision (b), limits corporate punitive damage liability "to those employees who exercise substantial independent authority and judgment over decisions that ultimately determine corporate policy." (*White*, at p. 573; see *Pagarigan IV*, *supra*, [at p. 33].) That an employee with some supervisorial or administrative responsibility authorized or ratified the unlawful conduct, standing alone, is not sufficient: "[T]he Legislature intended that principal liability for punitive damages not depend on employees' managerial level, but on the extent to which they exercise substantial discretionary authority over decisions that ultimately determine corporate policy. Thus, supervisors who have broad discretionary powers and exercise substantial discretionary authority in the corporation could be managing agents. Conversely, supervisors who have no discretionary authority over decisions that ultimately determine corporate policy would not be considered managing agents even though they may have the ability to hire or fire other employees. In order to demonstrate that an employee is a true managing agent under section 3294, subdivision (b), a plaintiff seeking punitive damages would have to show that the employee exercised substantial discretionary authority over significant aspects of a corporation's business." (*White*, at pp. 576-577; see *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1221 [quoting *White*]; *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428 [same].)

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[4] Unlike punitive damages, compensatory damages may be awarded against a corporation for its employee's tort under the doctrine of respondeat superior without proof it directed or ratified the wrongful act. (See *White v. Ultramar, Inc., supra*, 21 Cal.4th at p. 569.)

b. *Elder Abuse Act remedies*

The legislative purpose of the Elder Abuse Act is "to afford extra protection to a vulnerable portion of the population from mistreatment by abuse or neglect." (*Conservatorship of Kayle* (2005) 134 Cal.App.4th 1, 5.) To accomplish this purpose, Welfare and Institutions Code section 15657 "makes available, to plaintiffs who prove especially egregious elder abuse to a high standard, certain remedies 'in addition to all other remedies otherwise provided by law.'" (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 779 (*Covenant Care*).) Specifically, when a defendant has committed certain defined acts of abuse or neglect against an elder or dependent adult and has been guilty of recklessness, oppression, fraud, or malice in the commission of such abuse,[5] enhanced remedies are available, including attorney fees (Welf. & Inst. Code, § 15657, subd. (a)) and damages for pain and suffering that otherwise would not be recoverable in a survivorship action. (Welf. & Inst. Code, § 15657, subd. (b); see *Conservatorship of Kayle*, at p. 6 ["personal representatives or successors are able to recover pain and suffering damages for an elderly patient," but such relief "requires proof of conduct equivalent to conduct that would support recover of punitive damages"]; *Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 529 ["[w]here the elder or dependent adult has died, the neglect or abuse resulting in pain or mental suffering must amount to recklessness, oppression, fraud or malice, in order to justify the heightened remedies"]; see generally *Covenant Care*, at pp. 779-780.)

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[5] As relevant to the case at bar, pursuant to Welfare and Institutions Code section 15657, enhanced remedies under the Elder Abuse Act may be available if a defendant is liable for neglect as defined in Welfare and Institutions Code section 15610.57, which includes the failure to provide medical care for physical needs and the failure to prevent malnutrition or dehydration. (See Welf. & Inst. Code, § 15610.57, subd. (b)(2) & (4); see generally *id*. at § 15610.07, subd. (b) ["abuse of an elder" includes "deprivation by a care custodian of goods and services that are necessary to avoid physical harm or mental suffering"].)

Welfare and Institutions Code section 15657, subdivision (c), provides, "The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer." Accordingly, with respect to a corporate employer, as here, the availability of enhanced remedies under the Elder Abuse Act requires proof of authorization, ratification or personal participation in an act of oppression, fraud or malice by an officer, director or managing agent of the corporation.

3. *The Fifth Amended Complaint Fails To Adequately Allege Misconduct at Magnolia Gardens Attributable to Libby Care and Longwood for Purposes of an Award of Punitive Damages or Enhanced Elder Abuse Act Remedies*

The Pagarigans, on the one hand, and Libby Care and Longwood, on the other hand, agree, if the case proceeds to trial, to recover damages—either punitive damages or the enhanced remedies provided by the Elder Abuse Act—for the alleged abuse suffered by their mother as a result of the actions or inactions of employees of Magnolia Gardens, the Pagarigans must prove, in addition to other elements of their claims, authorization or ratification of the abusive conduct by an officer, director or managing agent of one or both of the corporate defendants. Where they differ is the level of factual detail required for the Pagarigans to adequately plead such authorization or ratification in light of the Supreme Court's conclusion in *Covenant Care* that elder abuse claims must be pleaded "with particularity." (See *Covenant Care*, *supra*, 32 Cal.4th at p. 790; see generally *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 604 ["facts in support of each of the requirements of a statute upon which a cause of action is based must be specifically pled"].)

The sufficiency of a complaint must, of necessity, be evaluated on a case-by-case basis; but, in general, to survive a motion to strike an allegation of punitive damages or enhanced Elder Abuse Act remedies, a plaintiff must at least plead the ultimate facts showing an entitlement to such relief. (See *Clauson v. Superior Court, supra*, 67 Cal.App.4th at p. 1255; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166; see

generally Code Civ. Proc., § 425.10, subd. (a) [complaint is sufficient if it contains "[a] statement of the facts constituting the cause of action, in ordinary and concise language"]; *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ["the complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts"].)

Under this standard the allegations in paragraph 18 of the fifth amended complaint that the formulation of policies and procedures governing the care of patients at Magnolia Gardens, including the management decision to under staff and under fund the facility and the failure to supervise and train its nursing staff, was "committed by, or authorized and ratified by officers, directors and/or managing agents" of Libby Care and Longwood, consisting solely of the legal conclusion required by Civil Code section 3294, subdivision (b), rather than any facts supporting that conclusion, are insufficient. (See *Grieves v. Superior Court*, *supra*, 157 Cal.App.3d at p. 168 [when punitive damages sought against corporate employer, facts must be alleged to advance knowledge, authorization or ratification]; see also *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29 [pleading must contain facts to support claim of oppression, fraud or malice].)

We acknowledge the Court of Appeal in *Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, cited by the Pagarigans at oral argument, found sufficient to plead the right to recover enhanced elder abuse remedies under Welfare and Institution Code section 15657, subdivision (c), the allegation the Regents of the University of California had "'failed to exercise the requisite degree of care but rather acted with recklessness in the failure to appropriately and adequately care for, monitor, and treat Lidia Marron's declining health condition'" at one of the hospitals owned and operated by the Regents because, as a public entity, the Regents can only act through its employees or agents. (*Marron*, at p. 1067.) *Marron*, however, was decided before *Covenant Care*, *supra*, 32 Cal.4th 771, and we believe its conclusion is inconsistent with the Supreme Court's requirement that elder abuse claims be pleaded "with particularity": Merely asserting an elder or dependent adult's injury was the product of corporate recklessness, without

more, does not satisfy that requirement and cannot support a claim for enhanced elder abuse remedies. (See *Covenant Care*, at p. 790.)

Somewhat closer to the mark are the additional allegations in paragraph 18 that Rosa Valdivia, Magnolia Gardens's administrator, and Mona Paras, director of nursing service, had management responsibilities and developed and implemented corporate policies and procedures at the facility. The Pagarigans also alleged Valdivia and Paras directed the care and treatment provided to Johnnie Pagarigan and were personally involved in, or authorized and ratified, all decisions relating to her care and treatment, including the misconduct identified in the amended complaint. However, neither Valdivia nor Paras is (or is alleged to be) an officer or director of Libby Care or Longwood; and the Pagarigans' allegations, which do not suggest Valdivia or Paras have management duties with respect to any other Libby Care or Longwood skilled nursing facility, fall short of alleging they belong to the corporate leadership group or otherwise qualify as "managing agents" of the corporate entities.

"'Managing agents' are employees who 'exercise[ ] substantial discretionary authority over decisions that ultimately determine *corporate policy*.'" (*Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 167; see *White v. Ultramar, Inc.*, *supra*, 21 Cal.4th at pp. 576-577.) "'[C]orporate policy' is the general principles which guide a corporation, or rules intended to be followed consistently over time in corporate operations. A 'managing agent' is one with substantial authority over decisions that set these general principles and rules." (*Cruz,* at pp. 167-168.) It is simply not enough that an employee's decisions may have significant consequences, as those of Valdivia and Paras regarding patient care allegedly do: "Whether the corporation will be liable for punitive damages depends, not on the nature of the consequences, but rather on whether

the malicious employee belongs to the leadership group of 'officers, directors, and managing agents.'" (*Id.* at p. 168.)[6]

In sum, absent any allegations that employees at Magnolia Gardens, including Valdivia and Paras, have any responsibility for or authority over Libby Care and Longwood's corporate-wide policies and procedures, rather than day-to-day management duties at one facility, or allegations that individuals (whether or not identified by the Pagarigans) within Libby Care and Longwood's leadership group were aware of and ratified the corporate funding and staffing policies that allegedly led to the abuse suffered by Johnnie Pagarigan, the trial court properly granted the motion to strike the claims for punitive damages and enhanced remedies under the Elder Abuse Act.

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[6] The court in *Marron v. Superior Court, supra*, 108 Cal.App.4th 1049, in evaluating a motion for summary adjudication of the dependent adult abuse cause of action, observed the plaintiffs had submitted evidence the hospital's director of patient care services had actual knowledge of understaffing complaints made by nurses caring for Lidia Marron and failed to take remedial action and had asserted in their separate statement of disputed facts that the director "was responsible for the Hospital's nursing services and staffing and therefore was a managing agent" of the Regents of the University of California. (*Id*. at p. 1068.) Without identifying any evidence to support the conclusion the director of patient services was a "managing agent" of the Regents or otherwise discussing the issue, the court held the plaintiffs had submitted "sufficient evidence to raise a triable issue of material fact whether a managing agent of [the Regents] ratified the alleged reckless neglect of the Hospital's nurses in caring for Lidia Marron." (*Ibid*.) Since the court did not consider whether the director was a managing agent within the meaning of Civil Code section 3294, subdivision (b), as explained in *White v. Ultramar, Inc.*, *supra*, 21 Cal.4th 563, *Marron* does not support the Pagarigans' argument their allegations regarding Valdivia and Paras are adequate to plead an elder abuse claim. (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 620 ["[a]n appellate decision is not authority for everything said in the court's opinion but only 'for the points actually involved and actually decided'"].)

DISPOSITION

The judgment is affirmed. Libby Care Center, Inc. and Longwood Management Corporation are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.